

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10798 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH RAMANBHAI SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

MR JK PARMAR for Petitioner
MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

The petitioner challenges the order of preventive
detention dated 22nd September, 1998, made by the
Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Along with the grounds of detention, the petitioner has been served with the grounds of detention also. It is alleged that the petitioner is a habitual offender and a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are prejudicial to the maintenance of public order. For reaching the aforesaid subjective satisfaction, the Detaining Authority has relied upon four offences registered against the petitioner and the statements given by three witnesses.

It is submitted that even if the allegations made against the petitioner were believed to be true, the activities of the petitioner can not be said to be prejudicial to the maintenance of public order, and the petitioner, therefore, could not have been detained under the Act. It is next contended that the Detaining Authority has wrongfully claimed privilege under section 9 (2) of the Act, and has withheld the names and other particulars of the witnesses, thereby the petitioner has been deprived of his right to make an effective representation against the order of detention. Further, though the Detaining Authority has referred to the associates of the petitioner, the names and other particulars of such associates are not furnished and thereby also the petitioner's constitutional right of making an effective representation against the order of detention is infringed. In any view of the matter, the petitioner can not be said to be a 'dangerous person' within the meaning of section 2 (c) of the Act and the power of preventive detention conferred under the Act could not have been exercised against the petitioner.

I have perused the grounds of detention and the supporting materials. It appears that during the years 1997 and 1998, as many as four offences punishable under Chapters XVI and XVII of the IPC have been registered against the petitioner in various Police Stations in the State. In the FIR in each of the aforesaid four registered offences the petitioner is alleged to have travelled by public transport and to have robbed the other passengers of their cash and other valuable materials and baggages by offering them intoxicated food articles. It is, thus, clear that the petitioner is repeatedly indulging in the criminal activities. The petitioner, therefore, can be said to be a habitual offender and consequently a 'dangerous person' within the

meaning of section 2 (c) of the Act. The petitioner's associate one Vimal is also a co-accused with the petitioner in the aforesaid offences, and his name has been disclosed in the concerned police papers as well as the statements of the witnesses. It, therefore, can not be said that the petitioner is not furnished the name of his associate who is referred to in the grounds of detention. Besides, all the three witnesses have narrated the incidents which tend to show that the petitioner's activities are prejudicial to the maintenance of public order. The witness No.1 has stated that on 30th June, 1998, the petitioner had gone to the residence of the witness and had insisted that the witness should keep a suitcase which the petitioner had brought at his residence. Since the witness was aware of the nefarious activities of the petitioner and his associate, he refused to take the said suitcase in his house. Feeling enraged, the petitioner dragged the witness to the public road, beat him, threatened him with dire consequences with open knife and robbed him of his cash worth Rs.2000/-. The petitioner also pursued the people gathered there with open knife, exhorted them with dire consequences . The people had to run halter skelter and the daily routine was disturbed. A similar incident occurred with the second witness on 8th July, 1998 when the said witness refused to purchase the gold chain from the petitioner. Yet such another incident happened with the third witness on 20th July, 1998 when he refused to accept some gold articles. All the three witnesses had agreed to give statements to the police only on assurance of anonymity. The aforesaid statements were recorded by the concerned Police Inspector on 4th July, 10th September and 18th September 1998. All the three witnesses were summoned before the Commissioner of Police, the Detaining Authority on 21st September, 1998. The said witnesses were examined by the Commissioner of Police, and the verifications have been recorded on the same day. Even in the grounds of detention, the Detaining Authority has specifically recorded the subjective satisfaction in this respect. In my view, therefore, the Detaining Authority can not be said to have wrongly exercised the privilege conferred under section 9 (2) of the Act. No other ground is urged before me.

For the aforesaid reasons, the petition is dismissed. Rule is discharged.

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JOSHI